

1 NCAC Title 18, Secretary of State
2 Chapter 06 - Securities Division
3 SubChapter 06A – Recodified Rules
4

5 18 NCAC 06A .2100 RULES FOR LOCAL PUBLIC OFFERINGS (LPO)

6 18 NCAC 06A .2101 PURPOSE

7 The purpose of the rules in this Section is to promote the overall economic health of North Carolina by:

- 8 (1) facilitating responsible and competitive intrastate capital formation by North Carolina companies
9 through increased availability of financial resources to businesses that might not otherwise have
10 access to capital;
- 11 (2) facilitating opportunities for North Carolinians to invest in local businesses;
- 12 (3) facilitating the use of general solicitation and advertising in small local public issuer offerings that
13 are conducted in a controlled and documented manner;
- 14 (4) facilitating small intrastate capital securities offerings that may use the Internet; and
- 15 (5) protecting the investing public.

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17 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
18 s.4.(a);
19 Eff. April 1, 2017, to expire on April 1, 2021.
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21 18 NCAC 06A .2102 SCOPE

- 22 (a) The rules in this Section shall apply to the offer and sale of securities by issuers conducting Local Public
23 Offerings (LPOs).
- 24 (b) The rules in Section .2000 of this SubChapter shall apply to securities offerings conducted pursuant to this
25 Section unless inconsistent.
- 26 (c) The rules in this Section shall not be construed to relieve any person from the provisions of G.S. 78A-8.

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28 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
29 s.4.(a);
30 Eff. April 1, 2017, to expire on April 1, 2021.
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32 18 NCAC 06A .2103 DEFINITIONS

33 Except as otherwise provided, the following definitions apply to G.S. 78A-17.1 and this Section:

- 34 (1) “Local Public Offering” or “LPO” means a securities offering that:
 - 35 (a) is conducted by an issuer relying on the Exemption;
 - 36 (b) is not using a North Carolina Intrastate Funding Portal or registered dealer or salesman;
 - 37 (c) is in compliance with the rules in Sections .2000 and .2100;

1 (d) sets a target offering amount of no more than two hundred fifty thousand dollars
2 (\$250,000);

3 (e) shall not exceed 12 consecutive months; and

4 (f) is sold only to North Carolina residents.

5 (2) "LPO security" means an equity or debt security or a revenue sharing security.

6 (3) "Offer" means any attempt to sell an LPO security in advance of, or in connection with, an LPO.

7 An offer may be oral or written. An offer includes attempts to condition the public mind or arouse
8 public interest generally in the issuer's LPO securities by publication of any information and
9 statements, and publicity efforts, including any advertising materials. NOTE: Examples of ways
10 in which an offer may be made are conversations, advertising, social media posts, presentations,
11 emails, brochures, circulars, or similar communications.

12 "Offer" is further defined in G.S.78A-2(8)b. and is a term of art in securities law. It is
13 recommended that questions about the meaning of "offer" be directed to attorneys with expertise
14 in securities laws.

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16 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
17 s.4.(a);

18 *Eff. April 1, 2017, to expire on April 1, 2021.*

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20 **18 NCAC 06A .2104 LPO LIMITATIONS**

21 (a) An issuer conducting an LPO shall not set a target offering amount greater than two hundred fifty thousand
22 dollars (\$250,000).

23 (b) An issuer conducting an LPO shall set a minimum offering amount that shall be no less than 25% of the target
24 offering amount set by the issuer and disclosed in the disclosure document.

25 (c) An issuer may conduct more than one LPO provided that the aggregate amount raised shall not exceed two
26 hundred fifty thousand dollars (\$250,000) in the 12 months from the date of the Administrator's determination that
27 the issuer has completed the required filings for the first LPO.

28 (d) The Administrator shall require a six-month cooling off period between the conclusion of any LPO and the
29 filing of a subsequent securities offering pursuant to Section .2000.

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31 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
32 s.4.(a);

33 *Eff. April 1, 2017, to expire on April 1, 2021.*

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35 **18 NCAC 06A .2105 MANDATORY CONFERENCE**

1 (a) An issuer offering or selling LPO securities shall contact the Division to arrange and attend a conference with
2 staff of the Securities Division before advertising, offering, or selling securities. The contact may be made by either
3 calling the Division at (919) 807-2100 or emailing the Division at secdiv@sosnc.gov.

4 (b) The issuer and the staff shall discuss the criteria for claiming the Exemption and how the issuer plans to ensure
5 that it fits within the Exemption.

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7 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
8 s.4.(a);
9 Eff. April 1, 2017, to expire on April 1, 2021.

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11 **18 NCAC 06A .2106 FILING FORM NCE**

12 (a) An issuer of an LPO shall file the Form NCE in compliance with Rule .2008 of this SubChapter.

13 (b) In addition to the requirements of Rule .2008 of this SubChapter, the issuer shall file a Form NCE addendum
14 form. The addendum form shall include:

- 15 (1) all websites to be used by the issuer in connection with the LPO;
16 (2) all social media accounts to be used by the issuer in connection with the LPO; and
17 (3) an attestation that the issuer is not one of the prohibited entities in Rule .2008(1)(g) or .2013 of
18 this SubChapter.

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20 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
21 s.4.(a);
22 Eff. April 1, 2017, to expire on April 1, 2021.

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24 **18 NCAC 06A .2107 ESCROW PROVISIONS**

25 The issuer shall comply with the escrow provisions of Rules .2017 through .2028 of this SubChapter.

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27 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
28 s.4.(a);
29 Eff. April 1, 2017, to expire on April 1, 2021.

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31 **18 NCAC 06A .2108 OPTIONAL USE OF INTERNET BY AN ISSUER OF AN LPO**

32 (a) An issuer conducting an LPO offering may use the Internet to offer and sell its LPO securities but is not required
33 to create a platform. “Platform” means a program or application accessible via the Internet or other similar
34 electronic communication medium where prospective investors, investors, and issuers publicly communicate with
35 each other online.

36 (b) An issuer that chooses to use the Internet to offer an LPO shall make and maintain records of the
37 communications that are related to the LPO in accordance with Rule .2112 of this Section.

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History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);
Eff. April 1, 2017, to expire on April 1, 2021.

18 NCAC 06A .2109 GENERAL SOLICITATION AND ADVERTISING FILING REQUIREMENTS

- (a) An issuer may use general solicitation or advertising in connection with an LPO if the issuer complies with paragraphs (b) through (d). An issuer of an LPO shall be responsible for the accuracy and reliability of its general solicitations and advertising.
- (b) General solicitation or advertising that complies with Rules .2043 and .2044 of this SubChapter may be used with regard to an LPO without filing it with the Administrator before use.
- (c) No later than 10 business days before use, publication, or distribution, the issuer shall file with the Administrator copies of any advertisement, pamphlet, circular, form letter, pitch book, sales literature, sales script, or other advertising communication addressed or intended for distribution to prospective investors relating to the LPO.
- (d) No later than 10 business days before any public meeting or gathering promoted through general solicitation or advertising, for the purpose of discussing or presenting information regarding an LPO, the issuer shall provide notice to the Administrator. The notice shall be provided by either calling the Division at (919) 807-2100 or emailing the Division at secdiv@sosnc.gov.
- (e) Media coverage of an LPO that has not been paid for or initiated by the issuer or on behalf of the issuer is not general solicitation or advertising and shall not be filed in advance with the Administrator, unless intended to circumvent the requirements of this Section.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);
Eff. April 1, 2017, to expire on April 1, 2021.

18 NCAC 06A .2110 UNACCEPTABLE GENERAL SOLICITATION AND ADVERTISING

An issuer conducting an LPO shall not use, publish, or distribute any general solicitation or advertising that would violate Rule .1308(d) of this SubChapter.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);
Eff. April 1, 2017, to expire on April 1, 2021.

18 NCAC 06A .2111 ADMINISTRATOR REVIEW OF GENERAL SOLICITATION AND ADVERTISING MATERIALS

1 (a) The Administrator may object to the general solicitation or advertising materials relating to an LPO with regard
2 to accuracy, reliability, or other reasons related to investor protection.

3 (b) The Administrator shall:

4 (1) notify the issuer of its objections to the general solicitation or advertising materials; and

5 (2) the issuer shall resolve the objections to the materials before use of the materials. An issuer of an
6 LPO shall be responsible for the accuracy and reliability of its general solicitations and
7 advertising.

8 (c) The Administrator may prohibit the use of any advertising relating to the LPO that violates G.S. 78A-8, Rule
9 .1308(d) of this SubChapter or Rule .0201 of SubChapter 06B of this Chapter.

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11 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
12 s.4.(a);

13 *Eff. April 1, 2017, to expire on April 1, 2021.*

14 15 **18 NCAC 06A .2112 RECORDKEEPING REQUIREMENTS**

16 In addition to the recordkeeping requirements in Rules .2060 through .2062 of this SubChapter, an issuer shall make
17 and maintain copies of all general solicitation materials and advertising, regardless of the medium in which it was
18 used, published, or distributed. At the time of creation and dissemination, an issuer shall preserve all
19 communications, social media posts, and other electronic distributions relating to the LPO.

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21 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
22 s.4.(a);

23 *Eff. April 1, 2017, to expire on April 1, 2021.*

24 25 **18 NCAC 06A .2113 PROHIBITED LPO ISSUER BUSINESSES**

26 In addition to the activities prohibited in Rule .2008(1)(g) of this SubChapter, an LPO shall not be conducted by an
27 issuer that:

28 (1) is issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral
29 rights;

30 (2) is issuing asset-backed securities as defined in 17 CFR 229.1101(c), which is incorporated by
31 reference including subsequent amendments and editions;

32 (3) is not a company engaging primarily in petroleum, gas, or hydraulic fracturing exploration,
33 production, mining, or other extractive industries;

34 (4) is not an equipment leasing program;

35 (5) is not engaged in peer-to-peer lending, social lending, online marketplace lending or in the
36 marketplace lending industry;

1 (6) engages as a substantial part of its business in the purchase, sale, or development, or purchasing,
2 selling, or holding for investment of commercial paper, notes, other indebtedness, financial
3 instruments, securities, or real property, or otherwise make investments; or

4 (7) is a real estate investment trust (“REIT”).

5 A copy of 17 CFR 229.1101(c) is available at no cost either online at <http://www.sosnc.gov/sec/statutes.aspx> or by
6 sending an email request to secdiv@sosnc.gov.

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8 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
9 s.4.(a);
10 Eff. April 1, 2017, to expire on April 1, 2021.

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12 **18 NCAC 06A .2114 ADMINISTRATOR MAY APPROVE CERTAIN OTHER LPOS**

13 (a) Issuers with complex business structures not listed in Rule .2013 of this SubChapter and that plan to conduct an
14 LPO shall request evaluation by the Administrator. NOTE: For example, a real estate program may have a complex
15 business structure.

16 (b) An issuer seeking evaluation by the Administrator pursuant to paragraph (a) shall:

17 (1) submit a request for evaluation in writing at least 30 business days before the filing of the NCE for
18 the LPO; and

19 (2) submit information and documents that show that the issuer can provide adequate disclosure to
20 investors concerning the issuer, the securities offered, and the offering itself.

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22 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
23 s.4.(a);
24 Eff. April 1, 2017, to expire on April 1, 2021.

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26 **18 NCAC 06A .2115 EVALUATION OF THE ISSUER BUSINESS**

27 (a) The Administrator may consider the following to determine whether to authorize an LPO:

28 (1) the complexity of the business, the LPO, or the issuer;

29 (2) whether the simplified disclosures required by G.S. 78A-17.1, Section .2000 and the rules in this
30 Section can adequately be made in light of the complexity of the business; and

31 (3) suitability of investment for investors.

32 (b) The Administrator shall notify the issuer in writing regarding the decision as to whether an LPO will be allowed.

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34 *History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,
35 s.4.(a);
36 Eff. April 1, 2017, to expire on April 1, 2021.

1 **18 NCAC 06A .2116 SUNSET PROVISION**

2 (a) The Administrator shall not accept any new Form NCE or other filing related to a new LPO after April 1, 2020.

3 (b) The rules in this Section shall expire on April 1, 2021.

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5 *History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103,*
6 *s.4.(a);*

7 *Eff. April 1, 2017, to expire on April 1, 2021.*